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Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 03-152
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS, Coalinga, California)	
)	DOCKET FILE COPY ORIGINAL
)	
AVENAL EDUCATIONAL SERVICES, INC.)	Facility ID No. 3365
)	
Permittee of FM Station KAAX, Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL SERVICES, INC.)	Facility ID No. 9993
)	
Permittee of FM Station KYAF, Firebaugh, California)	
)	
H. L. CHARLES D/B/A FORD CITY BROADCASTING)	Facility ID No. 22030
)	
Permittee of FM Station KZPE, Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY BROADCASTING)	Facility ID No. 37725
)	
Licensee of FM Station KZPO, Lindsay, California)	

To: Marlene H. Dortch, Secretary
Attn: The Commission

**ENFORCEMENT BUREAU'S REPLY TO THE
ZAWILA PARTIES' EXCEPTIONS TO SUMMARY DECISION (FCC 17M-28)**

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SUMMARY

1. On July 16, 2003, the Commission released an Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order (HDO) against Avenal Educational Services, Inc. (Avenal); Central Valley Educational Services, Inc. (Central Valley); William L. Zawila (Zawila); H.L. Charles Broadcasting d/b/a Ford City Broadcasting (FCB); and Linda Ware d/b/a Lindsay Broadcasting (LB). The HDO directed, *inter alia*, that Zawila and FCB show cause why their respective construction permits for stations KNGS(FM) and KZPE(FM) should not be revoked and why their respective authority to operate said stations should not be terminated. The HDO further directed Zawila and LB to show cause why the license for station KZPO(FM) should not be revoked and all authority to operate said station should not be terminated. The HDO also designated the issue of whether, in light of the evidence adduced against them, Zawila, FCB, and LB possess the qualifications to be and remain Commission permittees and/or licensees.

2. At the March 29, 2016 Status Conference, the Presiding Judge deemed admitted the Bureau's requests for admissions served on Zawila, FCB, and LB since they failed to provide timely responses. As a result of Zawila's, FCB's, and LB's repeated failure to comply with their discovery obligations, on May 10, 2016, the Presiding Judge entered findings of fact against them on all issues in the HDO concerning stations KNGS(FM), KZPE(FM) and KZPO(FM). On August 9, 2016, the Enforcement Bureau (Bureau) moved for summary decision against Zawila on issues related to stations KNGS(FM), KZPE(FM), and KZPO(FM); against FCB on all issues related to station KZPE(FM); and against LB on all issues related to station KZPO(FM). The Presiding Judge granted the Bureau's motion for summary decision on August 10, 2017.

3. On September 8, 2017, the Commission's mailroom received a pleading entitled "Exceptions to the Summary Decision of Chief Administrative Law Judge Richard L. Sippel (FCC 17M-28)" (Zawila Parties' Exceptions). The Zawila Parties' Exceptions, however, were not properly, and or timely, filed with the Commission and are otherwise procedurally flawed. In addition, the Zawila Parties' Exceptions fail to demonstrate any factual or legal basis for the Commission to reverse the Presiding Judge's Summary Decision ruling.

4. As set forth in greater detail below, the Zawila Parties' Exceptions should not be considered and/or should be denied. Accordingly, the Bureau respectfully requests that the Commission issue a final decision concluding that the Presiding Judge's Summary Decision shall become effective.

1. On August 10, 2017, the Presiding Judge granted summary decision against William L. Zawila (Zawila), H.L. Charles Broadcasting d/b/a Ford City Broadcasting (FCB), and Linda Ware d/b/a Lindsay Broadcasting (LB) (collectively, the Zawila Parties).¹ This Summary Decision order terminated the hearing proceeding and certified the matter to the Commission.² On September 8, 2017, the Commission's mailroom received a pleading entitled "Exceptions to the Summary Decision of Chief Administrative Law Judge Richard L. Sippel (FCC 17M-28)" (Zawila Parties' Exceptions).³ For the reasons set forth in the Enforcement Bureau's (Bureau's) motion for leave to file a reply to the Zawila Parties' Exceptions, filed concurrently with the instant pleading, the Chief, Enforcement Bureau, through her attorneys, hereby respectfully submits the Bureau's reply to these Exceptions.⁴

I. PROCEDURAL BACKGROUND

2. On July 16, 2003, the Commission released an Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order (HDO) against Avenal Educational Services, Inc. (Avenal); Central Valley Educational Services, Inc. (Central Valley); William L. Zawila (Zawila); H.L. Charles Broadcasting d/b/a Ford City Broadcasting (FCB); and Linda Ware d/b/a Lindsay Broadcasting (LB).⁵ Among other things, the HDO directed Zawila and FCB to show cause why their respective construction permits for stations KNGS(FM) and

¹ See *Summary Decision of Chief Administrative Law Judge*, FCC 17M-28 (ALJ, rel. Aug. 10, 2017) (Summary Decision).

² See *id.* at 17.

³ See Exceptions to the Summary Decision of Chief Administrative Law Judge Richard L. Sippel (FCC 17M-28), received by the Commission on Sept. 8, 2017, filed as Exhibit 1 to the Enforcement Bureau's Motion For Leave to File a Reply to The Zawila Parties' Exceptions to Summary Decision, filed Nov. 9, 2017.

⁴ See Enforcement Bureau's Motion For Leave to File a Reply to The Zawila Parties' Exceptions to Summary Decision, filed Nov. 9, 2017.

⁵ See *In re Zawila*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (2003) (HDO).

KZPE(FM) should not be revoked and their respective authority to operate said stations terminated.⁶ The HDO further directed Zawila and LB to show cause why the license for station KZPO(FM) should not be revoked and all authority to operate said station terminated.⁷ The HDO also designated the issue of whether, in light of the evidence adduced against them, Zawila, FCB, and LB possess the qualifications to be and remain Commission permittees and/or licensees.⁸ Zawila appears on behalf of himself, FCB and LB.

3. *The Bureau's 2015 discovery requests.* Soon after the HDO was issued in 2003, the then Presiding Judge Arthur Steinberg granted a stay of the matter in September 2003.⁹ Judge Steinberg extended the stay in March 2004.¹⁰ On May 22, 2015, the Bureau moved to lift the stay.¹¹ In *Order*, FCC 15M-21, the Presiding Judge lifted the stay and ordered that “discovery can and should commence forthwith on all issues.”¹² The Bureau promptly served its first set of interrogatories and first set of document requests on the Zawila Parties on July 28, 2015 and July 29, 2015, respectively. The Zawila Parties’ responses to these requests contained nothing but baseless objections. They did not provide a single substantive response to *any* of the Bureau’s document requests or interrogatories. The Bureau moved to compel complete responses from each of them.¹³

⁶ See HDO, 18 FCC Rcd at 14967, para. 113.

⁷ See *id.* at 14968, para. 114.

⁸ See *id.* at 14968, para. 113(g), 14989, para. 114(i).

⁹ See *Order*, FCC 03M-39 (ALJ, rel. Sept. 12, 2003).

¹⁰ See *Order*, FCC 04M-09 (ALJ, rel. Mar. 5, 2004).

¹¹ See Enforcement Bureau’s Motion To Lift The Stay, filed May 22, 2015.

¹² *Order*, FCC 15M-21 (ALJ, rel. June 4, 2015), at 2.

¹³ See, e.g., Enforcement Bureau’s Motion to Compel William L. Zawila to Provide Complete Responses to Outstanding Discovery Requests, filed Aug. 21, 2015; Enforcement Bureau’s Motion to Compel the Estate of H.L. Charles d/b/a Ford City Broadcasting to Provide Complete Responses to Outstanding Discovery Requests, filed Aug. 21, 2015; and Enforcement Bureau’s Motion to Compel the Estate of Linda Ware d/b/a Lindsay Broadcasting to Provide Complete Responses to Outstanding Discovery Requests, filed Aug. 21, 2015.

4. On December 23, 2015, the Presiding Judge granted the Bureau's motion to compel Zawila to provide complete answers to the Bureau's first set of interrogatories and document requests served in July 2015.¹⁴ The Presiding Judge ordered Zawila to "revisit all interrogatories and requests to produce documents that were served by the Enforcement Bureau, as well as all requests for admissions served in 2003, and . . . provide positive and cooperative responses."¹⁵ In addition, the Presiding Judge ordered Zawila to submit a status report with attached declarations describing the production efforts by January 5, 2016 and to file this submission with the Commission's electronic comment filing system (ECFS) by the close of business on January 6, 2016.¹⁶ Zawila did not submit a status report to the parties or to the Presiding Judge on January 5, 2016, or file any such report with the Commission on January 6, 2016 as directed. Zawila also did not provide any additional response to the Bureau's July 2015 discovery requests or to the Bureau's 2003 requests for admissions (2003 RFAs). Zawila did not attempt to contact the Bureau concerning these outstanding discovery requests.

5. On March 14, 2016, the Presiding Judge granted the Bureau's motion to compel FCB to provide complete answers to the Bureau's first set of interrogatories and document requests served in July 2015.¹⁷ As with Zawila, the Presiding Judge ordered FCB to "provide positive and cooperative responses" to the Bureau's outstanding discovery requests.¹⁸ The Presiding Judge similarly ordered LB to provide complete responses to the Bureau's discovery requests.¹⁹ Neither FCB nor LB provided responses to the Bureau's July 2015 first set of

¹⁴ See *Order*, FCC 15M-33 (ALJ, rel. Dec. 23, 2015).

¹⁵ *Id.* at 7.

¹⁶ See *id.*

¹⁷ See *Order*, FCC 16M-08 (ALJ, rel. Mar. 14, 2016).

¹⁸ *Id.* at 6.

¹⁹ See *Order*, FCC 16M-09 (ALJ, rel. Mar. 15, 2016).

interrogatories or requests for documents.

6. *The Bureau's 2016 discovery requests.* On February 2, 2016, the Bureau served a second set of RFAs (2016 RFAs) on all parties. Pursuant to the Commission's rules, the parties were obligated to provide their answers to these 2016 RFAs by February 18, 2016.²⁰ On February 8, 2016, Michael Couzens, counsel for two additional parties, Avenal Educational Services, Inc. (Avenal) and Central Valley Educational Services, Inc. (Central Valley), moved for protection from answering the Bureau's 2016 RFAs.²¹ The Zawila Parties, however, did not meet the February 18 deadline for responding to the Bureau's 2016 RFAs and did not, by that deadline, otherwise preserve their rights to object. Instead, two days *after* the deadline, on February 20, 2016, the Zawila Parties moved to join the already pending motion for protective order filed by Mr. Couzens.²² The Presiding Judge denied Mr. Couzens' motion on February 29, 2016, thus mooted the Zawila Parties' joinder request.²³ The Zawila Parties did not submit responses to the Bureau's 2016 RFAs until March 28, 2016.

7. *The March 29, 2016 Status Conference and the Adverse Inference Order.* The Presiding Judge originally scheduled a Status Conference for February 24, 2016 to address discovery-related issues.²⁴ On February 18, 2016, the Presiding Judge rescheduled this Status Conference for March 22, 2016.²⁵ In this *Order*, the Presiding Judge instructed Zawila (in his capacity as an individual and as counsel for FCB and LB) to "use the time before March 22,

²⁰ See 47 C.F.R. § 1.246(b).

²¹ See Motion for Protective Order (47 C.F.R. Sec. 1.313), filed Feb. 8, 2016. The Bureau opposed this motion. See Enforcement Bureau's Opposition To Motion For Protective Order, filed Feb. 11, 2016.

²² See Joinder in Motion for Protective Order (47 C.F.R. Sec. 1.313), served Feb. 20, 2016.

²³ See *Order*, FCC 16M-05 (ALJ, rel. Feb. 29, 2016).

²⁴ See *Order*, FCC 15M-33, at 7.

²⁵ See *Order*, FCC 16M-03 (ALJ, rel. Feb. 18, 2016), at 2.

2016, to comply with the Enforcement Bureau's outstanding discovery requests."²⁶ In a response to the Zawila Parties' requests to attend the Status Conference by telephone, the Presiding Judge again directed Zawila to meet his discovery obligations.²⁷ Due to a scheduling conflict, the Presiding Judge rescheduled the Status Conference for March 29, 2016 and again reminded Zawila "to focus on producing discovered questions and documents in a complete and timely manner."²⁸

8. On March 29, 2016, the Presiding Judge held a Status Conference in this matter. Counsel for the Bureau attended the Status Conference, and Michael Couzens attended as counsel on behalf of Avenal and Central Valley. Zawila did not attend, and since he is counsel of record for FCB and LB, they were not represented at this Conference.²⁹ At this Conference, the Presiding Judge, *inter alia*, ruled that the Zawila Parties' March 28, 2016 responses to the Bureau's 2016 RFAs were late and that, by operation of Section 1.246(b) of the Commission's rules (Rules), the 2016 RFAs served on the Zawila Parties were deemed admitted.³⁰ The Presiding Judge also considered the Bureau's request that he enter adverse findings of fact

²⁶ *Id.*

²⁷ See *Order*, FCC 16M-04 (ALJ, rel. Feb. 24, 2016), n.4 ("Counsel must be aware that outstanding discovery issues are set forth in *Order* FCC 15M-33 at 7, released December 23, 2015, for which the non-government parties are delinquent . . . The next Status Conference set for March 22, 2016, might be avoided, in part or in whole, if . . . Zawila . . . do[es his] homework and satisfactorily complete[s] delinquent discovery.").

²⁸ *Order*, FCC 16M-06 (ALJ, rel. Feb. 29, 2016), n.1.

²⁹ Zawila, on behalf of himself, FCB, and LB, requested to appear at the March 22, 2016 Status Conference by speakerphone in order to accommodate previously-scheduled obligations. See *Request to Attend Status Conference by Speakerphone*, served Feb. 11, 2016. The Presiding Judge denied this request. See *Order*, FCC 16M-04. On March 24, 2016, Zawila, on behalf of himself, FCB, and LB, served a pleading stating that neither he nor his clients could afford to attend the March 29, 2016 Status Conference. See *Statement for Status Conference Set for March 29, 2016*, served by mail on March 24, 2016.

³⁰ See *Transcript of March 29, 2016 Status Conference (Tr.)* at 55:23-56:4; *Order*, FCC 16M-18 (ALJ, rel. May 10, 2016), n. 21 (citing *Transcript of March 29, 2016 Status Conference* at 55:23-56:12). See also 47 C.F.R. § 1.246(b) ("Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof, or within such shorter or longer time as the presiding officer may allow on motion or notice, the party to whom the request is directed serves . . . a sworn statement specifically denying the matters of which is an admission is requested or . . . written objections . . .").

against the Zawila Parties on all of the allegations set forth in the HDO based on the failure of each of these parties to comply with their discovery obligations.³¹ The Presiding Judge directed the Bureau to file a proposed order regarding negatives inferences against the Zawila Parties.³² The Bureau filed this proposed order on March 30, 2016.³³

9. On May 10, 2016, the Presiding Judge released *Order*, FCC 16M-18, in which he made findings of fact against the Zawila Parties.³⁴ In this *Order*, the Presiding Judge found that the Zawila Parties had refused to “provide timely and complete responses to [the Bureau’s] pending discovery requests despite repeated instructions and orders from the Presiding Judge to do so.”³⁵ In light of the Zawila Parties’ “defiant stonewalling” of discovery, the Presiding Judge concluded that negative inferences were warranted.³⁶

10. The Bureau moved for summary decision based on the Zawila Parties’ admissions and the Presiding Judge’s findings of fact, arguing that there were no material facts to be determined at the hearing concerning: (a) Zawila and the issues related to stations KNGS(FM),

³¹ See, e.g., Tr. at 6:16-7:9. See also *Omnibus Order*, FCC 16M-14 (ALJ, rel. Mar. 30, 2016), at 3.

³² See *Omnibus Order*, FCC 16M-14, at 3.

³³ See Enforcement Bureau’s Proposed Order Regarding Negative Findings of Fact Warranted By Discovery Violations, filed Mar. 30, 2016. Zawila, FCB, and LB opposed the Bureau’s proposed order. See *Objection To Proposed Order Regarding Negative Findings of Fact Warranted By Discovery Violations*, served by mail on Apr. 11, 2016.

³⁴ See *Order*, FCC 16M-18. On May 26, 2016, Zawila, FCB and LB served by mail an appeal of this *Order* directly to the Commission. See *Appeal of Order (FCC 16M-18) to the Full Commission*, served May 26, 2016. Pursuant to Section 1.301(a) of the Rules, there are only five categories of orders that can be appealed directly to the Commission. See 47 C.F.R. § 1.301(a). Even if *Order*, FCC 16M-18, qualified for one of these five categories (which the Bureau contends it does not), Zawila, FCB, and LB’s appeal was filed out of time. Pursuant to Section 1.301(c)(2) of the Rules, such appeals must be filed no later than five (5) days after issuance of the order being appealed. See 47 C.F.R. § 1.301(c)(2). Even allowing Zawila, FCB, and LB an additional three days because *Order*, FCC 16M-18, was mailed, any appeal should have been filed no later than May 20. Zawila, FCB, and LB did not file the appeal electronically. Instead, they mailed the appeal. The Commission does not consider this pleading as filed until the day it was received – May 31, 2016 – almost two weeks after the deadline for its filing. See 47 C.F.R. § 1.7. This appeal is still pending before the Commission.

³⁵ *Order*, FCC 16M-18, at 2.

³⁶ *Id.* at 3.

KAAX(FM), KYAF(FM), KZPE(FM), and KZPO(FM); (b) FCB and the issues related to station KZPE(FM); and (c) LB and the issues related to station KZPO(FM).³⁷ On August 10, 2017, the Presiding Judge granted the Bureau's motion.³⁸ It is that Summary Decision from which the Zawila Parties now appeal.

II. THE ZAWILA PARTIES' EXCEPTIONS ARE PROCEDURALLY FLAWED

11. *The Zawila Parties' Exceptions were not filed with the Commission.* A Summary Decision is subject to appeal or review in the same manner as an Initial Decision.³⁹ Thus, pursuant to Section 1.276(a)(1) of the Rules, the Zawila Parties were entitled to appeal the Presiding Judge's August 10, 2017 Summary Decision by filing exceptions within 30 days of its public release – or, by September 11, 2017.⁴⁰ As with any filing to the Commission, the Zawila Parties were required to direct their Exceptions to the Commission's Office of the Secretary.⁴¹ The Zawila Parties' Exceptions, however, are directed only to the Chairman and Commissioners of the Federal Communications Commission. There is nothing to indicate, therefore, that the Zawila Parties' Exceptions were ever filed with the Commission. Indeed, the Zawila Parties' Exceptions do not appear on ECFS. As the deadline for filing exceptions to the Presiding Judge's Summary Decision has now passed, the Zawila Parties did not timely file their Exceptions. On this basis alone, the Zawila Parties' Exceptions should not be considered.

12. *The Zawila Parties' Exceptions do not include a certificate of service and were not properly served.* Pursuant to Section 1.211 of the Rules, "all pleadings filed in a hearing

³⁷ See Enforcement Bureau's Motion for Summary Decision, filed Aug. 9, 2016.

³⁸ See *supra* n.1

³⁹ See 47 C.F.R. § 1.251(e).

⁴⁰ See 47 C.F.R. § 1.276(a)(1).

⁴¹ See, e.g., 47 C.F.R. § 1.301(c)(4) and 47 C.F.R. § 1.302(d) (requiring that appeals be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554).

proceeding shall be served upon all other counsel in the proceeding” and “[a]ll such papers shall be accompanied by proof of service.”⁴² The Zawila Parties’ Exceptions are not accompanied by any such proof of service. Thus, there is no evidence that the Zawila Parties served either Bureau counsel or counsel for any other parties. Indeed, Bureau counsel did not receive a copy of the Exceptions until the Presiding Judge’s clerk recently forwarded them to the Bureau.⁴³ On this basis as well, the Commission should not consider the Zawila Parties’ Exceptions.

13. *The Zawila Parties’ Exceptions exceed the allowed page limits.* Section 1.277(c) of the Rules states that “[e]xcept by special permission, the consolidated brief and exceptions will not be accepted if the exceptions and argument exceed 25 double-spaced typewritten pages.”⁴⁴ The Rule clarifies that although the table of contents and table of citations are not counted in the 25-page limit, “all other contents of and attachments to the brief are counted.”⁴⁵ The Zawila Parties’ brief is 19 pages and attaches an additional 31 pages of exhibits. Given that the Zawila Parties neither sought – nor obtained – special permission to exceed the 25-page limit, their Exceptions far exceed the allowed page limit. Pursuant to Section 1.277(c), therefore, the Commission should not accept the Zawila Parties’ Exceptions.

III. THE ZAWILA PARTIES’ EXCEPTIONS OFFER NO LEGAL BASIS FOR REVERSING THE SUMMARY DECISION

14. *The Commission’s character policy does not restrict the Presiding Judge’s ability to consider allegations made against the Zawila Parties.* The Zawila Parties contend that the Summary Decision is improper because “[t]he entirety of the alleged misconduct in this case

⁴² 47 C.F.R. § 1.211.

⁴³ See Email from Rachel Funk to Pamela Kane and Michael Engel, dated Oct. 30, 2017, filed herewith as Exhibit 1.

⁴⁴ 47 C.F.R. § 1.277(c).

⁴⁵ *Id.*

took place more than ten (10) years ago”⁴⁶ and as such “violates [the] FCC’s established policy that FCC-related conduct which has occurred more than ten (10) years ago should not be considered.”⁴⁷ This assertion is baseless for at least two reasons. First, the Commission’s Character Policy does not preclude the Presiding Judge from considering matters that occurred more than 10 years ago. Indeed, as the Presiding Judge previously recognized, the Commission’s 1986 Character Policy contains no such limitation.⁴⁸ Instead, it suggests only that, *as a general matter*, the Commission should impose a 10-year limitation when considering past conduct in the context of examining an applicant’s (or, in this case, a permittee’s) past conduct.⁴⁹ Moreover, the Commission retains the discretion to investigate and consider conduct that occurred beyond that time period if the circumstances warrant.⁵⁰ Second, nothing in the Commission’s Character Policy precludes the Presiding Judge from relying on the Zawila Parties’ own admissions of fact about their alleged misconduct as support for the Summary Decision even if that alleged misconduct took place more than ten years ago. Thus, the Commission’s Character Policy offers no basis for reversing the Summary Decision.

15. *Unsubstantiated statements that are not part of the record are insufficient for reversing summary decision.* The Zawila Parties contend that revocation of their authorizations

⁴⁶ Zawila Parties’ Exceptions at 3 (Exception 1).

⁴⁷ *Id.*

⁴⁸ *See, e.g., Order*, FCC 16M-10 (ALJ, rel. Mar. 21, 2016), at 2-3; *Order*, FCC 16M-05 (ALJ, rel. Feb. 29, 2016), at 2.

⁴⁹ *See Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC 2d 1179, 1229, para. 105 (1986) (emphasis added) (Character Policy).

⁵⁰ In the Commission’s 1990 *Policy Statement and Order* concerning character qualifications, it modified certain of the policies it enunciated in the Commission’s 1986 Character Policy, including allowing the Commission to consider evidence of any conviction for misconduct involving a felony, regardless of when the conduct occurred. *See Policy Regarding Character Qualifications in Broadcast Licensing, Policy Statement and Order*, 5 FCC Rcd 3252 (1990); *see also Titus*, 29 FCC Rcd 14066, 14071 (2014) (concluding that the Commission could consider convictions that occurred more than ten years before the Order to Show Cause).

was excessive and unwarranted.⁵¹ However, instead of offering any legal basis or “specific reference[s] to the record” in support of these assertions,⁵² the Zawila Parties rely exclusively on unsubstantiated statements – made for the first time in their Exceptions – concerning the licensees’ alleged “good record” with the Commission and the apparent impact of such revocation on long-time listeners, creditors, advertisers, and the community.⁵³ Such statements are insufficient to form a basis for reversing the Summary Decision.

16. *Minor errors in the Preliminary Statement of the Summary Decision do not warrant reversal of the Summary Decision.* In its Preliminary Statement, the Summary Decision refers to factual findings based on the Zawila Parties’ failure to respond to the “Bureau’s Requests for Admission[s] that were served on all the Zawila Parties on July 29, 2015.”⁵⁴ The Zawila Parties contend that these factual findings must be disregarded because there were no requests for admissions served on that day.⁵⁵ It is clear from a careful review of the Summary Decision that the Presiding Judge’s reference to July 29, 2015 was simply a minor typographical error. As the record reflects, the Bureau served document requests and interrogatories on the Zawila Parties on July 29, 2015.⁵⁶ The Bureau did not serve requests for admissions until February 2, 2016.⁵⁷ Regardless of when the Bureau served its requests for admissions, however, it is plain that the factual findings upon which the Presiding Judge relied in entering the Summary Decision are based upon the Zawila Parties’ failure to timely respond to those

⁵¹ See Zawila Parties’ Exceptions at 6 (Exception 2).

⁵² 47 C.F.R. § 1.276(a)(2) (requiring that exceptions present “clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other materials relied on”).

⁵³ See Zawila Parties’ Exceptions at 6-11.

⁵⁴ See *id.* at 11 (Exception 3).

⁵⁵ See *id.*

⁵⁶ See Summary Decision, FCC 17M-28, at 2, para. 4; 4-5, para. 12.

⁵⁷ See *id.* at 5, para. 14.

requests.

17. In addition, the Zawila Parties take exception to a sentence in the Preliminary Statement of the Summary Decision suggesting that the proceeding was stayed September 12, 2003 and again on March 5, 2004 at the request of the parties.⁵⁸ The Zawila Parties argue that they did not seek the stay; rather, a stay was entered for the limited purpose of allowing the parties to pursue a distress sale and for the Media Bureau to consider such a sale.⁵⁹ The Zawila Parties fail, however, to point to anything suggesting that the stay of the proceedings, regardless of why it was entered, formed a basis for the Presiding Judge's findings in the Summary Decision. Accordingly, this Exception offers no basis for reversing it.

18. *The Presiding Judge's orders did not provide unlimited time for the Zawila Parties to respond to the Bureau's discovery requests.* The Zawila Parties take exception to the many statements in the Summary Decision cataloguing their continuous failures to provide complete and/or timely responses to the Bureau's discovery requests.⁶⁰ They appear to suggest that because the Presiding Judge's discovery-related orders did not specify a deadline by which their responses were due, their responses cannot be considered untimely.⁶¹ Yet, the Presiding Judge issued the very orders on which the Zawila Parties rely for this contention in response to motions to compel the Bureau was forced to file after the Zawila Parties' failed to provide substantive responses to the Bureau's interrogatories and document requests by the requisite deadline.⁶² In addition, the Zawila Parties omit that in *Order*, FCC 15M-33, the Presiding Judge

⁵⁸ See Zawila Parties' Exceptions at 11-12 (Exception 4).

⁵⁹ See *id.*

⁶⁰ See *id.* at 12-16 (Exceptions 5-7); 17-18 (Exceptions 10-14).

⁶¹ See *supra* n.60.

⁶² See *Order*, FCC 16M-08 (ALJ, rel. Mar. 14, 2016) and *Order*, FCC 16M-09 (ALJ, rel. Mar. 15, 2016). See also *See Order*, FCC 15M-33 (ALJ, rel. Dec. 23, 2015).

ordered Zawila to submit a status report with attached declarations describing his production efforts by January 5, 2016 and to file this submission with ECFS by the close of business on January 6, 2016.⁶³ Zawila did not meet either of these deadlines. The Zawila Parties also omit that the Presiding Judge directed each of them to negotiate their incomplete responses to the Bureau's interrogatories and document requests with the Bureau and to "certify to such good faith negotiations" in a declaration.⁶⁴ None of the Zawila Parties complied with these directives either.

19. The Zawila Parties further omit that the Presiding Judge repeatedly directed Zawila (in his capacity as an individual and as counsel for FCB and LB) to complete discovery before the scheduled March 2016 status conference. In *Order*, FCC 16M-03, for example, the Presiding Judge instructed Zawila to "use the time before March 22, 2016, to comply with the Enforcement Bureau's outstanding discovery requests."⁶⁵ In *Order*, FCC 16M-04, the Presiding Judge cautioned Zawila "that outstanding discovery issues are set forth in *Order* FCC 15M-33 at 7, released December 23, 2015, for which the non-government parties are delinquent . . . The next Status Conference set for March 22, 2016, might be avoided, in part or in whole, if . . . Zawila . . . do[es his] homework and satisfactorily complete[s] delinquent discovery."⁶⁶ In *Orders*, FCC 16M-08 and FCC 16M-09, the Presiding Judge further encouraged the Zawila Parties to "substantially" complete discovery before the status conference in an effort to avoid the need for such a conference.⁶⁷ Thus, the Zawila Parties did not have an unlimited time for responding to the Bureau's discovery requests.

⁶³ See *Order*, FCC 15M-33, at 7.

⁶⁴ *Order*, FCC 16M-08, at 6; *Order*, FCC 16M-09 at 2; see also *Order*, FCC 15M-33, at 7.

⁶⁵ See *Order*, FCC 16M-03 (ALJ, rel. Feb. 18, 2016), at 2.

⁶⁶ *Order*, FCC 16M-04 (ALJ, rel. Feb. 24, 2016), at 2 and n.4.

⁶⁷ See, e.g., *Order*, FCC 16M-08, n.7; *Order*, FCC 16M-09, n.1.

20. Moreover, none of the orders on which the Zawila Parties rely in their Exceptions – namely *Orders*, FCC 16M-08 and FCC 16M-09 – suggest that the Presiding Judge granted the Zawila Parties any additional time to respond to the Bureau’s 2016 RFAs on which the Presiding Judge relied for the Summary Decision. It is plain from the language of these *Orders* that they referred only to the Bureau’s interrogatories and document requests to which comprehensive responses were originally due in August 2015.⁶⁸ Thus, here again, the Zawila Parties offer no basis on which to reverse the Summary Decision.

21. *The requirements for summary decision have been met.* Lastly, the Zawila Parties take exception to the Presiding Judge’s conclusion that there are no genuine issues of material fact for determination at a hearing regarding the construction, operation, and control of stations KZPO, KZPE, and KNGS.⁶⁹ However, the Zawila Parties do not challenge (or even cite to) any material facts concerning any of these stations. Instead, they simply generally refer to the Zawila Parties’ responses to a set of RFAs the Bureau served in 2003 (2003 RFAs).⁷⁰ They fail to identify any specific material fact that is in dispute as a result of these responses. Moreover, even if these documents could be relied upon (their reliability is addressed below), the record plainly reflects that the Summary Decision was based on more than the Zawila Parties’ apparent failure to provide responses to the Bureau’s 2003 RFAs.

22. As discussed earlier, in *Order*, FCC 15M-33, the Presiding Judge unambiguously directed Zawila, *inter alia*, to revisit “revisit all interrogatories and requests to produce documents that were served by the Enforcement Bureau, *as well as all requests for admission*

⁶⁸ See, e.g., *Order*, FCC 16M-08, at 2 and *Order*, FCC 16M-09, at 1. See also *Order*, FCC 15M-33, at 2.

⁶⁹ See Zawila Parties’ Exceptions at 16-17 (Exception 8).

⁷⁰ See *id.*

served in 2003, and Zawila is ordered to provide positive and cooperative responses.⁷¹ The Presiding Judge also directed Zawila to negotiate his incomplete discovery responses with the Bureau and to file in the public record a status report with attached declarations describing his production efforts and certifying his good faith negotiations with the Bureau.⁷² The Presiding Judge similarly directed FCB and LB “to provide positive and cooperative responses” to any requests for admission, to negotiate in good faith with the Bureau concerning any incomplete responses, and to certify such good-faith negotiations in a declaration document.⁷³ The Presiding Judge put Zawila on notice in December 2015 that “outright refusals and stonewalling may eventually result adverse inferences and assumptions that would justify resolving *HDO* allegations against [him].”⁷⁴

23. Nevertheless, the Zawila Parties completely ignored the Presiding Judge’s directives. As the record reflects, no meaningful discovery responses were timely served, no status reports or declarations were submitted, no contact was made with the Bureau to negotiate responses, and, as “the final nail in the proverbial coffin,”⁷⁵ the Zawila Parties failed to appear at the March 29, 2016 status conference that the Presiding Judge specifically called “to take inventory of discovery completed and discovery needed.”⁷⁶ It was on these bases – and on the totality of the Zawila Parties’ conduct in this case – that the Presiding Judge concluded negative inferences were warranted and Summary Decision was appropriate. Indeed, as the Presiding Judge recognized, even if the Zawila Parties’ “assertion of compliance [with their 2003

⁷¹ *Order*, FCC 15M-33, at 7 (emphasis added).

⁷² *See id.*

⁷³ *See Order*, FCC 16M-08, at 6 (directing FCB); *Order*, FCC 16M-09, at 2 (directing LB).

⁷⁴ *Order*, FCC 15M-33, at 6.

⁷⁵ *Order*, FCC 16M-18, at 5.

⁷⁶ *Order*, FCC 15M-33, at 7.

discovery obligations] was supported by the record . . . [the Zawila Parties'] utter failure to participate in good-faith discovery" warranted adverse inferences.⁷⁷

24. In addition, the Presiding Judge concluded that the Zawila Parties' responses to the Bureau's 2003 RFAs could not serve as a basis for establishing that facts remain in dispute because, among other indicia affecting their reliability, they appear to be neither complete nor authentic, and therefore are inadmissible.⁷⁸ Specifically, each of their responses are incomplete⁷⁹ and/or inauthentic⁸⁰ because they, conspicuously, *all* lack a stamp of receipt by any party at the Commission (*e.g.*, the Bureau, the Office of the Secretary, the Office of the Administrative Law Judges, *etc.*); *all* lack a signature by the attorney of record (the signature lines are blank); *all* have declarations dated three days *before* the date of the responses (raising the question of whether the declarations were made with first-hand knowledge of what ultimately was contained in the responses); and *all* lack certificates of service.⁸¹

25. Furthermore, attached to the purportedly served response from LB is a "declaration" dated **October 17, 2003**, signed by Cynthia Ramage as "Executor of the Estate of Linda Ware."⁸² In 2004, however, Zawila, as counsel for LB, filed with the Commission an FCC Form 316 (an application for consent to transfer the license) which attached the letters testamentary order from the Superior Court of California appointing Cynthia Ramage as

⁷⁷ Order, FCC 16M-18, at 4-5. See also Summary Decision, FCC 17M-28, at 8, para. 20.

⁷⁸ See also Summary Decision, FCC 17M-28, at 8, para. 20 ("The Zawila Parties' 2003 responses cannot serve as a basis for establishing material facts . . . the responses are neither complete nor authentic and would be inadmissible.").

⁷⁹ See Fed. R. Evid. 106.

⁸⁰ See Fed. R. Evid. 901.

⁸¹ In addition, these incomplete and unsigned documents would also likely violate the best evidence rule in that they are not originals, or even copies of originals. See Fed. R. Evid. 1002 (requiring originals), 1003 (permitting copies of originals).

⁸² See [Zawila Parties'] Opposition to Enforcement Bureau's Motion for Summary Decision, received Aug. 19, 2016, at Exhibit 5.

executor. This document indicated that Ms. Ramage had not been appointed by the Court as executor of Linda Ware's estate until *May 19, 2004* – more than 7 months *after* the date of the declaration attached to LB's 2003 RFA response.⁸³ While this potential misrepresentation would typically go to weight, and not to admissibility, because there is no indication in the record that Ms. Ramage had any involvement with, or authority over, LB's station, KZPO(FM), prior to becoming executor, her declaration in support of LB's response should be deemed inadmissible because it is not apparently based on first-hand knowledge.⁸⁴

26. In sum, based on the multiple bases for inadmissibility for all three of the purported Zawila Parties' responses to the Bureau's 2003 RFAs, they cannot be relied upon to suggest that there are any material facts in dispute. Thus, the Zawila Parties' reliance now on these responses offers no basis upon which to reverse the Summary Decision.

Conclusion

27. For the reasons stated above, the Zawila Parties' Exceptions should not be considered and/or should be denied. Accordingly, the Bureau respectfully requests that the Commission issue a final decision concluding that the Presiding Judge's Summary Decision shall become effective.

⁸³ See Enforcement Bureau's Reply to the [Zawila Parties'] Opposition to the Motion for Summary Decision, filed Aug. 30, 2016, at Exhibit 1.

⁸⁴ Moreover, if Ms. Ramage was not the executor, and not involved in the operation of the station, her declaration would likely be based on inadmissible hearsay. See Fed. R. Evid. 802.

Respectfully submitted,

Rosemary Harold
Chief, Enforcement Bureau

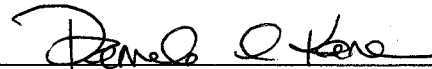
Pamela S. Kane
Special Counsel
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554
(202) 418-1420

Michael Engel
Special Counsel
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C366
Washington, D.C. 20554
(202) 418-7330

November 9, 2017

Respectfully submitted,

Rosemary Harold
Chief, Enforcement Bureau



Pamela S. Kane
Special Counsel
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554
(202) 418-1420

Michael Engel
Special Counsel
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C366
Washington, D.C. 20554
(202) 418-7330

November 9, 2017

EXHIBIT 1

Pamela Kane

From: Rachel Funk
Sent: Monday, October 30, 2017 3:06 PM
To: Pamela Kane
Cc: Michael Engel
Subject: Zawila exceptions
Attachments: 20171030145743-217.pdf

Hi Pam,

Bob someone from Audio just stopped by, asking about Zawila. It sounded as though EB might not be aware that Zawila filed exceptions, so I'm attaching them here for your perusal.

Rachel B. Funk
Attorney Advisor
Office of the Administrative Law Judges
Federal Communications Commission
(202) 418-2268

CERTIFICATE OF SERVICE

Pamela S. Kane certifies that she has on this 9th day of November, 2017, sent copies of the foregoing "ENFORCEMENT BUREAU'S REPLY TO THE ZAWILA PARTIES'


EXCEPTIONS TO SUMMARY DECISION (FCC 17M-28)" to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

Rachel Funk
Off of the Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

William Zawila, Esq.
12600 Brookhurst Street, Suite 105
Garden Grove, CA 92804-4833
(714) 636-5040 (telephone)
(714) 636-5042 (facsimile)
(by first-class mail and e-mail to william.zawila@yahoo.com)

Michael Couzens
Michael Couzens Law Office
6536 Telegraph Avenue
Suite B201
Oakland, CA 94609
(by first-class mail and email to cuz@well.com)



Pamela S. Kane